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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---------------------------------------|---|--------------------------|
| JACK BUCKBY; and |) | |
| |) | |
| MARTINA MARKOTA, |) | |
| |) | |
| Plaintiffs |) | |
| |) | COMPLAINT |
| |) | |
| -against- |) | |
| |) | |
| KIRSTENJEN NIELSEN, Secretary, |) | |
| Department of Homeland Security; |) | |
| and |) | Civ. No. 18-11081 |
| |) | |
| MIKE POMPEO, |) | |
| Secretary, U.S. Department |) | |
| of State; and |) | |
| |) | |
| MATTHEW G. WHITAKER, |) | |
| Acting Attorney General, |) | |
| US Department of Justice, |) | |
| |) | |
| Defendants. |) | |

Plaintiffs, Jack Buckby and Martina Markota, through undersigned counsel, alleges as follows:

INTRODUCTION

1. This is an individual action for mandamus seeking to compel Defendants, Department of Homeland Security (“DHS”) Secretary Mike Pompeo, US Department of State (“USDOS”), Matthew Whitaker, Acting Attorney General, US Department of Justice (“USDOJ”) to timely adjudicate plaintiff’s visitor visa application which has been pending for nearly two (2) years now.

JURISDICTION

2. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction), the Administrative Procedures Act (“APA”); 8 U.S.C. § 1329, Immigration & Nationality Act (“INA”), and 28 U.S.C. § 1361, regarding an action to compel an officer of the United States to perform his or her duty. Further this Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.
3. Costs and attorney fees will be sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412(d), *et. seq.*

VENUE

4. Venue is properly in this court pursuant to 28 U.S.C. §1391(e) as at least one Plaintiff resides within the district under the jurisdiction of this court and because defendants operate within this district. In addition, the defendants are officers and employees of the United States of America and no real property is involved in this action.

PARTIES

5. Plaintiff Jack Buckby (“Plaintiff Buckby”) is a citizen and national of Britain. On March 22, 2017 he filed a visitor’s visa application with the US consulate in London, England. To date the consulate has failed to adjudicate his application.
6. Plaintiff Martina Markota is a US citizen. She seeks to have her foreign boyfriend Jack Buckby visit her and her family in the US.
7. Defendant Kirstenjen Nielsen is the Secretary of DHS, and this action is brought against her in her official capacity. She is generally charged with enforcement of the INA, and is further authorized to delegate such powers and authority to subordinate employees of DHS. This action is brought against her in her official capacity.
8. Defendant Mike Pompeo is Secretary of USDOS, the agency charged with exercising authority over the US consulates and visa adjudications. This action is brought against him in his official capacity.

9. Defendant Matthew Whitaker is Acting Director of the USDOJ and those has supervisory authority over any required security and background checks.

STATEMENT OF FACTS

10. Plaintiff Buckby is not a citizen of the US.
11. On March 22, 2017 he filed an application for a visitor's visa to the United States.
12. On this date his visitor's visa application was neither approved nor denied but he was informed it was placed in "administrative processing."
13. He was instructed that processing usually takes less than 60 days by the consular officer he was speaking with.
14. On March 29th, 2017 at plaintiff's request Congressman Michael McCaul's office attempted to intervene on his behalf without success.
15. On December 14th, 2017 staff for Congressman Steve King's office wrote a letter to the US embassy in London requesting any information pertinent to his case.
16. Congressman King's office received the following response from the embassy:

Dear Ms. Edmiston:

Thank you for your correspondence on behalf of Congressman King regarding Jack Buckby's application for a nonimmigrant visa.

Mr. Buckby's application is subject to additional, mandatory administrative processing. While administrative processing usually lasts up to 60 days, in some instances it can take significantly longer. Mr. Buckby will be notified by email as soon as the review is complete. He should therefore ensure the email address on his account at <https://ais.usvisa-info.com/en-gb/niv> is up-to-date.

I hope this information is helpful.

Sincerely,

*Chief, Consular Information Unit
U.S. Embassy, London
/JM*

17. Congressman King's office made further inquiries but received no further response from the consulate.

18. In May of 2018 plaintiff requested information from the British Police to see if there were any complaints against him which he was unaware of.

19. On May 10, 2018 the British police responded that plaintiff has no criminal record and there have been no claims made against him.

20. On November 7th, 2018 plaintiff applied in person for a Foreign Media Representative's visa at the US embassy in London. He was informed this visa application would also be placed in administrative processing but was given no additional information.

CAUSES OF ACTION

Cause 1: Writ of Mandamus

21. Plaintiff brings this action under the Mandamus Act, 28 U.S.C. §1361, which allows for a writ of mandamus to be issued if the plaintiff has exhausted all other avenues of relief and the defendant owes him a clear, nondiscretionary duty.

Heckler v. Ringer, 466 US 602, 616, (1984).

22. In the instant case, Defendants have a clear, nondiscretionary duty to adjudicate visa applications before them in a timely manner. Plaintiff has repeatedly followed up and exhausted every remedy available to him in an attempt to obtain additional information or an adjudication on his visa application.

23. Plaintiffs have suffered irreparable harm as they have waited over twenty (20) months for the adjudication of said visa application.

Cause of Action 2: Administrative Procedures Act

24. The APA states that a person who is suffering a legal wrong because of agency action, or who is adversely affected by agency action within the meaning of a relevant statute, is entitled to judicial review. 5 USC §702. “Agency Action” is defined to include “the whole or part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or *failure to act*.” 5 USC §551(13) (emphasis added).

25. In delaying Plaintiff Buckby’s visa application defendants fail to act to adjudicate his request. Moreover, plaintiff is adversely affected by this agency

action because he suffers harm where he cannot travel to the US and his due process is violated in not timely adjudicating his application.

26. The reviewing court has the power to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).

WHEREFORE, the Plaintiff respectfully prays that defendants be cited to appear herein, and the Court:

- A. Assume jurisdiction over his claim;
- B. Compel the Defendants to timely adjudicate plaintiff Buckby’s visa application;
- C. Grant Plaintiffs’ reasonable attorney fees;
- D. Grant Plaintiffs such other relief at law and in equity as this Court deems just and proper.

Dated:11.27.2018

Respectfully submitted,
s/Nicklaus Misiti
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